

STATE OF MICHIGAN
COURT OF APPEALS

SHERRY L. BAKER,

Plaintiff-Appellant,

v

DEPARTMENT OF CORRECTIONS, LT. SCOTT
NOBLES, SGT. JAMES STACKHOUSE, CAPT.
BRADFORD BRYANT and BRIAN MILLER,

Defendants-Appellees.

UNPUBLISHED

June 11, 1999

No. 204211

Wayne Circuit Court

LC No. 95-532464 NZ

Before: Kelly, P.J., and Holbrook, Jr., and Murphy, JJ.

KELLY, J. (concurring in part and dissenting in part).

I respectfully dissent from the majority's conclusion that plaintiff has presented a genuine issue of material fact regarding her claim of hostile work environment sexual harassment. I concur with the majority in all other regards.

In this case, none of the conduct complained of by plaintiff rises to the level of creating a hostile work environment. Defendant Nobles made a few isolated comments which could be taken to constitute unwelcome sexual communication. The record appears to establish that Nobles was attempting to ask plaintiff out on a date. However, there is no evidence that these comments were intended to or did, in fact, substantially interfere with plaintiff's employment or created an intimidating, hostile, or offensive work environment. *Radtke v Everett*, 442 Mich 368, 382; 501 NW2d 155 (1993). In my view, plaintiff has not presented sufficient evidence for a trier of fact to pass on the question of whether the work environment was so infused with hostility toward women as to alter the conditions of employment. *Id.* at 385.

Plaintiff also relies upon a single incident in which defendant Miller grabbed plaintiff's buttocks. While a single incident could translate into sexual harassment, this incident was not so traumatic, as in the case of a violent sexual assault, as to constitute sexual harassment. *Id.* at 395. Also, this incident did not cause the work environment to be so infused with hostility toward women as to alter the conditions of employment. *Id.* at 385. Thus, it is my conclusion that this single incident did not create sufficient evidence to present a factual issue of a hostile work environment.

The remaining incidents complained of by plaintiff did not create a hostile work environment because, I believe, they did not involve conduct or communication on the basis of plaintiff's sex, nor did they involve unwelcome sexual conduct or communication directed at plaintiff. Therefore, I conclude that because plaintiff failed to demonstrate a genuine issue of material fact regarding a hostile work environment, the trial court properly dismissed that claim.

I concur with the majority's disposition of plaintiff's remaining claims.

/s/ Michael J. Kelly